Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No. _____

In The

Supreme Court of the United States

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ENOC C. and EMMA F. AGUILERA

Petitioners,

vs.

AUTO/OWNERS INSURANCE COMPANY;
DANIELS/NICHOLSON INSURANCE AGENCY;
FARMERS INSURANCE GROUP ET AL.;
UTICA NATIONAL INSURANCE GROUP ET AL.,

Respondents.

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On Petition For Writ Of Certiorari To The
Court of Appeals For The State Of
Arizona Appellate Court Division One

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PETITION FOR WRIT OF CERTIORARI

Ø

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52 pp

QUESTION PRESENTED

1. Whether Respondents' courted shield of inequity can continue to deprive the pro se Petitioners from their legal right to sue to enforce the following:

A. THE COMMUNICATIONS DECENCY ACT OF 1996
B. CONSTITUTIONAL RIGHTS UNDER THE 1ST, 7TH AND 14TH AMENDMENT
C. PETITIONERS' RIGHT TO BE PROTECTED UNDER THE FEDERAL PRIVACY LAW?

2. Whether Respondents' can be courted illegal shields by Arizona courts to use as serious inequity against the pro se Petitioner, his wife, and their Christian Ministry of THE BOOK MINISTRY?

PARTIES

The parties are Petitioners Enoc C. and Emma F. Aguilera - Husband and Wife - and their Ministry of the BOOK MINISTRY; the Respondents' are:

1) Auto/Owners Insurance Company - legal carrier of The Association and the Petitioners;
2) Daniels/Nicholson Insurance Agency - legal agent of The Association and Petitioners;
3) Farmers Insurance Company c/o Edward J. Frautschi Insurance Agency - legal carrier and legal agent for The Association and the Petitioners;
3) Utica National Insurance Group c/o Gallagher Alliance Insurance - legal carriers for The Association and the Petitioners.

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A. **ARCAP rule 27 (b)** is based if substitution of parties is necessary for <u>any</u> reason other than death. Rule 27 (b) is based on **FRAP 43(b)**. There is no counterpart to this rule in any prior Arizona rule. Rule 27(b) has bearing to **A.R.C.P. Rule 26(b) 5**: Nonparty Rule --- 7

B. The Arizona lower courts and appellate court failed the Appellants' cause by allowing the Respondents' to infringe the fidelity of breach of contract law and conflict of interest law: courted to impose upon the Petitioners gross inimical infliction of personal injuries through civil discrimination ---------- 10

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OPINIONS BELOW

The opinion of the Arizona Court of Appeals (App. at 3.) is unpublished. The trial court's order (App. at 1.) is also unpublished, and the Arizona Supreme Court's unpublished May 30, 2002 order denying review is annexed hereto at App. 10.

JURISDICTION

The judgment of the court of appeals was entered on March 7, 2002. (App. at 3.) The Arizona Supreme Court denied the Aguileras petition for review on May 30, 2002. (App. at 10, 11.) The jurisdiction of the Court is invoked pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

Article Ⅳ, section 2 of the U.S. Constitution provides:

> **The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.**

Section 1 of the First Amendment to the U.S. Constitution provides:

> **Congress shall make no law respecting an establish-**

ment of religion, or prohibiting the free exercise thereof, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Section 1 of the Seventh Amendment to the U.S. Constitution provides:

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of common law.

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Communications Decency Act of 1996, also provides:

(A) Whoever in interstate or foreign communications knowingly makes, creates, or solicits, and initiates the transmission of any comment, suggestion, proposal, image, or other communication which is obscene, lewd, lascivious, filthy or indecent, with intent to annoy, abuse, threaten, or harass another person: (B) Knowing the recipient of the communication is under 18 years of age regardless of whether the maker of such communication placed the call, or initiated the communication, shall be fined under title 18, United States Code, or imprisoned not more than two years, or both. *Public Law* 104 Title v Section 502 1(a), (B)(i)(ii).

ARIZONA CODES, SECTIONS, and RULES, In RELEVANT PART, PROVIDES:

When a dabatable issue is raised it will be taken as a confesion of error if no response or answer is filed. *Meinhardt Commercial Corp. v. Oxford Shops Inc. et al.* App. 592, 480 P.2d 13 (1071). (App.at 1.)

There is perhaps no doctrine more firmly established than 'The principle that liability follows tortious wrongdoing;' that where negligence is the proximate cause of injury the rule is liability and immunity is the exception. *Pritchard v. State* Page 2-6 Judgment 181(3) Ariz. 1990. (App. at 17.)

Nothing in the first Amendment bars an award of punitive damages in a defamation action if conditioned upon a showing of knowing or reckless falsehood. *Selby v. Savard* (1982) 134 Ariz. 222, 655 P.2d 342. (App. at 13.)

Fraudulent misrepresentation, may be effected by deceitful statements or half-truths or even concealment of material facts. *State v. Hass* (1983) 138, Ariz. 413, 675 P.2d 673.

Under this section, 'Intent to defraud' can be established by proving defendant devised the fraudulent scheme or willfully participated in it with knowledge of its fraudulent nature. *State v. Hass* (1983) 138 Ariz. 413, 675 P.2d 673.

[L]et "Court decide in first instance whether, under all circumstances statement is capable of bearing defamatory meaning," and jury decide whether defamatory meaning was in fact conveyed. *Yetman v. English.* (1991) 168 Ariz. 71,811 P.2d 323. (App. at 10.)

And the right of action to recover damages for injuries shall never be abrogated. *A.R.S. Const. art. 18, §6.-Id.*

Insurance in general: Six year statute of limitations, for suit based on a written contract or obligation. *A.R.S. §12-548.*

STATEMENT OF THE CASE

In view that a writ is not a matter of right but of judicial discretion, the Petitioners should be entitled to have their petition for writ of certiorari granted, and thus let the Honorable Court review the licentious deprivation of rights violated by Arizona courts. Gainsay, imposed through constrained racial profiling, bias, preference. Fallacious exaction in contempt of the infallibility to the rules of common law.

The fact also remains evident that the Petitioner's pro se status is not of his own free will but of enforced necessity due and through their failure to retain counsel to engage in civil litigation against a planned community association: a common citizen's legal predicament in the state of Arizona.

The Petitioner is a senior citizen male, a native of Arizona, residing there with his senior wife. Both are members in good standing in The Association Community where they pay blanket insurance premiums to the Respondents' - the Insurance Carriers named in this litigation.

The Petitioners' rights have been openly violated due to the relevant evidence incurred maliciously upon the Petitioner, his Christian ministry entitled The Book Ministry, his wife and family. The dismissed appellees' and the Respondents' filed defamatory police report, filed with the

Phoenix Police Department, October 16, 1996 (DR.No:6166-9181), went ignored by the decisions of the former courts which condoned flawed illegal precedents against the pro se litigants inclusive of the following: invalid judicial decisions imposed upon and now defaming the pro se Petitioner; violations of rules that govern the judicial processes of Arizona Law. **[App. at 6.]**

The makers of the defamatory communication - the filed fraudulent police report - which violates The Communications Decency Act of 1996, have implicated the nonparty at fault Respondents due to their retainment of counsel to defend the false and vicious accusations created by the maker and perpetrator of the illegal communication. This act, on part of the Respondents, was an inimical breach of policy, violating conflict of interest rights due to the Petitioners rights as members in good-standing and, adherent to The Association Community where we reside. **[App. at 1.]**

The Arizona appellate court's system departed from the accepted and usual course of judicial proceedings. The Arizona court has allowed coercive moral measures to be adopted against the pro se Petitioners by the lower courts. Through defending counsels' misrepresentation, the appellate court in Arizona also allowed without censure sanctions to be enforced against the senior Petitioners by the lower court, as to call for an exercise of this Court's supervisory power.

The state of Arizona appellate procedure has also failed to decide important federal questions in ways that conflict with violation of The Communications Decency Act of 1996. And through its failure to enforce 'federal privacy law,' the court allowed the dismissed appellee parties at fault[1] and the Respondents' nonpart(ies)y at fault to destroy (to this day) through malicious defamation the Petitioner's career as writer of his religious vocation of THE BOOK MINISTRY. This is a blatant violation of the Petitioner's rights to the First Amendment.[2]

The courts not only have allowed defamatory events to take place without censure, they have also condoned the distribution **through the United States mail of the police report** to all the association members nationwide (onto the tenant residents). This report was accessible to children in the association community which is place of residence of the

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[1] *Insurance Agreements.:* **A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action.** Ariz. R. Civ. P. Rule 26(b)(2).

[2] *Non-party at Fault.* **Any party who alleges, pursuant to A.R.S. §12-2506(B) (as amended), that a person or entity not a party to the action was wholly or partially at fault in causing any personal injury, property damage or wrongful**

Petitioner and family. The lower courts and the Respondents have knowingly and willfully conveyed the material made in the police report, which appeals to prurient interests and describes sexual conduct in a patently offensive way. The judicial system of the state of Arizona, has openly failed the Petitioners. The courts, having failed to enforce just determination against the offensive maliciousness of the Respondents', failed to rule in favor of the Petitioners right to a fair jury trial that would have vindicated the Petitioners cause through applied contemporary community standards. See the police report in the appellants filed Response, dated February 22, 2002. These unjust procedures administered in the appellate court are confirmed in **Judge Ann A. Timmer's** order of 02/14/2002: The appellate court's dismissal of case No.1 CA-CV 01-0602 is annexed hereto at **App. 3 and 15.**

The state of Arizona lower courts, failed to allow through wasteful litigation and unfair adjudication the Petitioners' legal right to sue those responsible of having created the malicious defamatory acts made in the communication: the nonparty at fault insurance carriers' - the Respondents' in this petition. The insurance carriers are

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death for which damages are sought shall provide the identity, location, and the facts supporting the claimed liabiity of such nonparty at the time of compliance with the requirements of Rule V(a) of the Uniform Rules of Practice

responsible and guilty of aiding and abetting voluntary financing to retain counsel for the makers[1] of the illegal and obscene communication.[2]

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of the Superior Court, if applicable, or within one hundred fifty (150) days after the filing of that party's answer, whichever is earlier. The trier of fact shall not be permitted to allocate or apportion any percentage of fault to any nonparty whose identity is not disclosed in accordance with the requirements of this subpart 5 except upon written agreement of the parties or upon motion establishing newly discovered evidence of such nonparty's liability which could not have been discovered within time periods for compliance with the requirements of this subpart 5. Arizona Rules of Civil Procedure Rule 26(b)(5).

[1] "Debt" in statute of limitations governing an action on a debt includes an action for damages for breach of contract. *Woodward v. Chirco Const. Co. Inc.* (App.) Div. 2 (1984) 141, 520 687 P.2d 1275, approved as supplemented 141 Ariz. 514, 687 P.2d 1269.

[2] Whoever in interstate or foreign communications knowingly makes, creates, or solicits, and initiates the transmission of any comment, suggestion, proposal, image, or other communication: The Communications Decency Act of 1996.

The Respondents' infringed conflict of interest law in relation to the Petitioners' right to compensatory entitlement. Violations due to our due-payimg membership which was, is and has always been in good-standing of the association community where blanket insurance premiums for personal injury protection is made to the insurance carriers - the Respondents'.[1] This community continues to be the Petitioner's legal place of residence where he, his ministry and family continue to suffer defamation of character to this day.[2]

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[1] To qualify for six-year statute of limitations, this section, promise upon which action is based must itself be written. *Kersten v. Continental Bank*.(App. Div. 1 1991) 129 Ariz. 44, 629 P.2d 592.

[2] Under statute providing that action for debt be commenced and prosecuted within six years after accrual of cause of action where indebtedness is evidenced by or founded on written contract executed in Arizona, action which is commenced within six-year limitations period and which is thereafter prosecuted with reasonable deligence should not be dismissed. *W.T. Rawleigh Co. v. Spencer* (1941) 58 Ariz. 182, 118 P.2d 674.

REASONS FOR GRANTING THE WRIT

This civil litigation addresses violation of federal law which constitutes, in general, The Communications Decency Act of 1996 - violation of the first, seventh, and fourteenth Amendment - and violation of the Federal Privacy Act. GROSS and blatant violations of the Petitioners' civil rights infringed purposefully by the Respondents through their granted shield condoned by the lower courts and, appellate court - acts to invalidate purposefully the minority pro se Petitioners' right to compensation for the atrocious personal-injury they have sustained for the past six years. All achieved through Respondents' "continuing conspiracy" in violation of the seventh Amendment section one: [Peoples] "right of trial by jury shall be preserved."

Open racial discrimination imposed willfully, knowingly, and purposefully upon the defenseless minority pro se Petitioners. All conspired to forbid other citizens in the state of Arizona from ever attempting such behavior in future civil actions against planned community associations - a common practice of illegality in the state of Arizona. This is in violation of the XIV Amendment Section 1: **'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.'**

Conjunctionally, the offices of the courts' clerks are equally responsible for permitting this conspiracy to exist

in our State. Governments within governments, states within states, and cities within cities. GOD help us all! To deny the Petitioners their petition for writ of certiorari, is to deny all the citizens in the state of Arizona "EQUAL PROTECTION UNDER THE LAW." No one is above the law: not even the court system in the state of Arizona. *Rules of the Supreme Court:* Rule 42 PROFESSIONAL CONDUCT: **"Error may not be predicated upon a ruling which admits or excludes evidence unless a substancial right of the party is affected." [App. at 2-B.]**

The purpose of the Arizona appellate court is to review rulings on matters of law. Nevertheless, the court has failed to decide important questions of federal law that have not been, but should be, settled by this Court: the allowing of a communication that is obscene, lewd, lascivious, filthy and indecent to purposely, knowingly, willfully, maliciously, and with willful intention annoy, abuse, threaten, harass, and destroy the good character of the Petitioner and his wife, their christian ministry of THE BOOK MINISTRY, AND THEIR FAMILY MEMBERS, INCLUDING GRANDCHILDREN AND GREAT-GRAND-CHILDREN. **[Constitutional violations App. at 2.]**

"The Communications Decency Act of 1996 requires that challenges to any provisions be heard by three-judge trial courts and that appeals be taken to the United States Supreme Court: whereto, the Petitioners make this petition

before the Honorable Court's presence."

The Communications Decency Act of 1996 makes it a crime to transmit a "communication which is obscene, lewd, lascivious, filthy, and indecent made with intent to annoy, threaten, or harass another person." The provision applies to all e-mail, even messages sent from one friend or acquaintance to another.

The fact remains evident that the former courts have been misled by counsel for the insurance carriers - the party at fault appellees' and nonparty at fault the Respondents' misrepresentation. [See Statement of the Case page 7[1n2].] Through the Respondents' schemes - with acts of inflicted defamation - and contributory negligence against liability compensation, the Petitioner's personal injury and that of The Book Ministry remain destroyed. Injuries induced through confirmed bias, prejudice, preference and outright racial profiling with civil discrimination condoned by the courts in violation of A.R.S. Section 13-2310.[1]

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[1] **Under this section proscribing fraudulent schemes and artifices, knowledge of the actual falcity of any particular representation made to promote the scheme is not required; provided the intent is to deceive, it is immaterial whether the individual knew the representation was false or simply did not care and was indifferent to the truth.** *State v, Hass.* (1983) 138 Ariz. 413, 675 P.2d 673.

The existing scheme of the Respondents through their defending counsel, was and is to deter the statute of limitations period that abrogates this cause after October 16, 2002. The Arizona appellate court's inactive stance on its decisions - the favoring of the Respondents' illegal infractions - granted the Respondents the right to defraud, thus far, the Petitioners from their legal right to be vindicated and compensated for the atrocious personal-injury they have sustained. **[App. at 19.]**

Honorable Justices: In the five year and ten month course of this litigation, counsel and the dismissed defendants have been monetarily compensated by the Respondents to help inflict the personal injury caused upon the defenseless pro se Petitioners. Please bear in mind that the illegally sanctioned Petitioners have paid for the Respondents' expenses through blanket insurance premiums for protection against the same violated rights given by the lower courts to the Respondents': The right to deprive the Petitioners from their rights to life, liberty, freedom of the press, freedom of religion, and the Petitioners' right to the pursuit of happiness. Freedoms denied the Petitioners through infringement of their right to EQUAL protection of the laws - with infringement 'to petition the Government for redress of (our) grievances.'

The Arizona Supreme Court's failure to serve the Petitioners with a copy of the court's May 30, 2002 Order

(App.at 4) evidences civil discrimination against the pro se litigants. (Our recent returned petition from the Supreme Court evidences [through the person responsible for the act] the same messages sent here in Phoenix: The U.S. mail in the United States does not contain - to my knwledge - four number zip codes. The digital zip of 8017 delayed our returned petition for two weeks. If the intent was to harass the Petitioner - welcome to our cause. If for this reason our petition is denied, bear in mind we shall petition the Congress of these United States for redress of our grievances.) These judicial offenses and violations of Arizona law, together with the proliferation of racial profiling existent in the state of Arizona, must be censured by this Court's power. Failure of the Court to grant the Petitioners writ will entitle those responsible and guilty of such malicious enmity to openly continue with their granted shields of inequity licentiously violating civil law. Injustices now subversively rampant in the state of Arizona.

The Respondents' granted shields must not be allowed to continue abridging the Petitioners legal right to petition the Court for redress of our grievances. The Respondents' shield must be barred by this Court's power from illegally continuing to deprive the Petitioners' legal right to sue the nonparty-at-fault insuracne carriers, the Respondents' in this petition before the United States Supreme Court. [See Statement of the Case page 7[1n2].]

CONCLUSION

For the foregoimg reasons, Petitioners Enoc C. and Emma F. Aguilera respectfully pray that this petition for *certiorari* be granted.

Dated this 23 day of September, 2002

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APPENDIX

1. BACKGOUND of CLAIMS ---------- App. at 1
2. DISCUSSION ---------- App. at 9
3. ABUSE OF PROCESS AND UNLAWFUL CLAIMS ---------- App. at 13
4. OTHER STATUTORY VIOLATIONS ----- App. at 17
5. OTHER CLAIMS ---------- App. at 21
6. CONCLUDING ---------- App. at 24
7. TO CONCLUDE ---------- App. at 28

App. 1

Filed 01/14/2002

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ENOC C. AGUILERA pro se Litigant et al., Plaintiffs and Appellants,	)	1 CA-CV 01-0602
	)	(Maricopa County Superior Court No. CV99-011756)
v.	)	
DANIELS/NICHOLSON et al., Defendants and Respondents.	)	ORDER
	)	/n.s./ G.E.DONAHOE PJ

No response having been filed,

IT IS ORDERED granting Defendant Auto-Owners Insurance Company's Motion to Strike Notice of Appeal.

END OF ORDER

Appellants Enoc C. and Emma F. Aguilera filed this action which case was assigned to the Honorable **Gary E. Donahoe**, due to his decision arising from his judgment entered for the respondents' and dismissed appellees' on 10/02/2001: affirmed as to other causes of action.

I. BACKGROUND OF CLAIMS

A. Appellants challenged the court's decision for respondents' debt arising out of damages incurred for "breach of

contract and infringed conflict of interest law." Judgment entered favoring the respondents infringed the appellants civil rights. **[Violation of Article IV Section 2 of the U.S. Constitution.]** In conjunction, violation of their Christian ministry of THE BOOK MINISTRY. **[Section 1 of the First Amendment.]** In consequence of which, the respondents became partakers in violation of the aforementioned laws having knowingly and wilfully misused the law misleading the courts through erroneous litigation. **[Section 1 of the Seventh Amendment.]** In 'conscious disregard' of the appellants disability. **[Section 1 of the Fourteenth Amendment.]**

B. The respondents are insurance carriers that contracted insurance protection to the Association and the appellants from October 16, 1996, date of the defamatory event, onto December 21, 2001, date of filing of this appeal: **[Evidence of Property Insurance Certificate of Personal-Injury liability Insurance of two million dollars Each Occurrence. Evidence that insurance as identified was issued, was in force, and conveyed with all the rights and privileges afforded under the issued policies.]**

The Villa Charme IV Homeowners' Association community, is place of residence of the appellant and his family to this day.

C. The previous courts' decisions ruled against the appel-

lants do not shield the insurance carriers - the respondents from liability for the personal injury they helped the dismissed appellees inflict upon the appellants. We, who are members in good standing of the association community where payments for blanket insurance have been made to the respondents: liability insurance that should have protected the appellants from the inflicted personal-injury they have sustained in the course of this cause - the past five years of this litigation.

> *Insurance Agreements:* **A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action.**

D. Appellants NONPARTY AT FAULT claim was confirmed to the court which ignored the following: **ARCAP Rule 27(b)** is based if substitution of parties is necessary for any reason other than death. 'This Rule 27(b) is based on **FRAP 43(b)**. There is no counterpart to this rule in any prior Arizona rule.' Rule 27(b) has bearing to state of Arizona civil litigation NONPARTY AT FAULT RULES: **A.R.C.P. Rule 26(b)5**. Wherefore, the Honorable Gary E. Donahoe's court erred in both decisions. For this reason **[as illustrated in App. at 4.]**, on March 7, 2002, justices **Ann A. Scott Timmer, Sheldon H. Weisberg,** and **Susan A. Ehrlic** ruled in error the dismissal of the defendants, the insurance carriers, the Respondents':

App. 4

Filed 03/07/2002

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ENOC C. AGUILERA pro se Litigant et al., Plaintiffs and Appellants,	)	1 CA-CV 01-0602 (DEPARTMENT M) MARICOPA County
v.	)	Superior Court
DANIELS/NICHOLSON et al., Defendants and Respondents.	)	No. CV99-011756 ORDER TIMMER P.J.

Judges Ann A. Scott Timmer, Sheldon H. Weisburg and Susan A. Ehrlich have considered appellees' "Motion to Dismiss Appeal," "Appellants' Response with Motion to Strike Appellees' Motion to Dismiss Appeal," and Appellants' Response." The judgment of dismissal against appellees Acord Corporation and Villa Charme IV Homeowners Association was affirmed by this court's Memorandum Decision filed November 7, 2000, and became final upon the Arizona Supreme Court's denial of review on April 19, 2001. The remaining named appellees were not parties defendant in the superior court.

IT IS ORDERED dismissing this appeal.

IT IS FURTHER ORDERED denying appellees' request for sanctions under Rule 11, Arizona Rules of Civil

Procedure, and Arizona Revised Statutes section 12-349 (1992).

Dated this 7th day of March, 2002.

/s/ Ann A. Scott Timmer
PRESIDING-JUDGE

C. In their order the justices denied the appellants' equal consideration for the unfair and illegal sanctions imposed upon them by **Judge Donahoe's** court. The appellate court enforced laws which abridged the privileges and immunities of the pro se appellants': citizens of the United States and the State they reside in. Also the fact is confirmed that the appellants did not identify The Association as an appellee in the caption of the appellants' notice of appeal. This vital claim and merit is openly confirmed in the Honorable **Phillip Hall's** ORDER of January 18th, 2002. **Which states:**

Filed 01/18/2002

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE:

Enoc C. Aguilera pro se	)	1 CA-CV 01-0602
Litigant et al.,	)	DEPARTMENT M
Plaintiffs and	)	
Appellants,	)	MARICOPA County
v.	)	Superior Court
Daniels/Nicholson et al.,	)	No. CV99-011756
Defendants and	)	
Respondents.	)	ORDER HALL P.J.
	)	

The court has reviewed its file in this appeal and preliminarily considered the "Motion to Strike Notice of Appeal" filed in the superior court by defendant Villa Charme IV Association, and the "Supplement to Plaintiffs' Notice of Appeal" filed by appellants in the superior court in apparent response thereto.[1]

[1] In Judge Donahoe's ORDER of 10/02/2001, His Honor orders: Pending before the court is defendant Villa Charme IV Association's Motion to Strike and Request for Sanctions in which other defendants have joined. No response has been received by the court. IT IS ORDERED granting the Motion to Strike: IT IS FURTHER ORDERED granting the request for Sanctions and awarding sanctions against Plaintiffs Enoc and Emma Aguilera, jointly and severally and

The superior court issued a minute entry order on January 14, 2002, purporting to grant the "Motion to Strike Notice of Appeal." This ruling was not in furtherance of the appeal, and was accordingly beyond the superior court's authority.[2] *See State of Arizona ex rel. Arizona Dep't of Corrections v. O'Connor;* 171 Ariz. 19, 21, 827 P.2d 480 (App. 1992).

The court observes that, though defendant Villa Charme IV Association was not identified as an appellee in the caption of appellants' notice of appeal, it has paid a filing fee in this court as an appellee.

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against their marital community, in the amount of $1,100 in favor of all the defendants. [In Judge Donahoe's 01/14/02 ORDER he states:] IT IS HEREBY ORDERED granting the Defendant Auto-Owners Insurance Company's Motion to Strike Notice of Appeal.

[2]Please bear in mind that the defenseless appellants were illegally sanctioned by Judge Donahoe at counsel for the dismissed appellees and respondents' fraudulent schemes and subversive demands.

The "Motion to Strike Notice of Appeal" filed by defendant Villa Charme IV Association requests that appellants' appeal be "terminated" as to all appellee insurance carriers who were not parties [non-party at fault] in the superior court, or not served with process in the superior court, or not granted relief in the superior court. The court advises the parties that the record on appeal is not yet due to be sent to the court of appeals, and that the court accordingly cannot identify the appellee insurance carriers to which the "Motion to Strike Notice of Appeal" refers. On the court's own motion,

IT IS ORDERED amending the caption of this appeal to add defendant Villa Charme IV Association as an appellee.

IT IS FURTHER ORDERED treating the "Motion to Strike Notice of Appeal" filed in the superior court by appellee Villa Charme IV Association as a motion to dismiss this appeal, and **DENYING** the motion without prejudice to its re-urging by motion filed in this court supported by copies of all portions of the record that are relevant thereto.

Dated this 18th day of January, 2002.

/s/ The Honorable Phillip Hall

PRESIDING JUDGE

D. **Judge Hall's** austere decision favoring the equal due

process claus and its infallible priciples, was and has been overruled in Judge Timmer's court and appellate court to this day. This Court should be made aware that justices **Ann A. Scott Timmer** and **Susan A. Ehrlich** have presided unfavorably in appellants both appeals **[App.at 5 and 17]**:

A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where the judge has a personal bias or prejudice knowledge of disputed evidentiary facts concerning the proceeding. *State of Arizona Code of Judicial Conduct*. Cannon 3E. Disqualification (1)(a).

E. Also the **Honorable Phillip Hall's** factual order evidences that his judgement was expected to be honored when he ordered: "The superior court issued a minute entry order of January 14, 2002, purporting to grant the "Motion to Strike Notice of Appeal." This ruling was not in furtherance of the appeal, and was accordingly beyond the superior court's authority." [LACKING PERSONAL JURISDICTION.]

2 DISCUSSION

A. The judgment of **Judge Donahoe's** court ORDER lacked personal jurisdiction. A violation of due process being null and void in the state of Arizona in which it was rendered. If the respondents' defense and the court's apparent find-

ing that the respondents' conduct was legal, it also hinged on the validity of the judgment.

> **A judgment of a court lacking personal jurisdiction is a violation of due process, and it is null and void everywhere, including the state in which it is rendered.** *Burnham v. Superior Court* (1990) 495 U.S. 604, 609.

B. If the Arizona judgment was a nullity then that defense and that finding would be insupportable as ruled on by the **Honorable Hall**. Thus, 'if a judgment is void, it may be assailed anywhere, at any time, in any way, by anybody.' The respondents' courted shields have offended traditional notions of fair play and substancial justice by employing violation of Arizona law making litigation so gravely difficult that the disabled pro se appellants' unfairly were at a severe disadvantage in comparison to six professional attorneys.

C. Therefore the courts have allowed litigation 'so gravely difficult, unfair, and discriminatory that the appellants were for all practical purposes deprived of their day in court.' The lower courts openly courted shields to ensure the respondents' with 'judgment proof' inequity. Unfairly enabling the respondents to illegally deprive the petitioners for the consequences of obligation respondents voluntarily agreed upon as insurance carriers for the Association community - where the atrocious defamatory event took

place - and, the appellants. Through their erroneous adjudication, the courts became blind to what all others (including Honorable Justices) could see and understand.[1] Blatant 'conscious disregard' willfully imposed upon the defenseless appellants' disability: respondents' wilfull violation of the Federal Privacy Act.[2]

D. Violation of the 'Due Process Claus' was allowed by the appallate court allowing the respondents illegal theories to 'cripple the defense' of the appellants: the court having granted the respondents' a right to deprive the appellants from their right to a fair judgment.

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[1] **A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall not initiate, permit, or consider ex parte communication, or consider other communications made to the judge outside the presense of the parties concerning a pending or impending proceeding.** *State of Arizona Code of Judicial Conduct.* Canon 3 B.(7).

[2] **"Wilfully" as used in this section proscribing a deprivation of civil rights, implies not merely a "conscious purpose" to do wrong, but a "specific intent" to deprive an inhabitant of a right.** *U.S. v. Ramey* C.A.W.VA.1964, 336 F.2d 512, certiorari denied 85 S.Ct. 649, 379 U.S. 972, 13 L.Ed.2.d 564.

E. The lower courts knowing that the pro se appellants' civil rights were being violated, therewith impaired the appellants' ability to properly defend themselves before a jury: wherewith, the courts became guilty of 'a gross abuse of process.' In the span of this gross abuse of process, the appellate court dismissed the appellants' cause denying their petition for review. Stating:

Filed 05/30/2002

SUPREME COURT

STATE OF ARIZONA

June 3, 2002

RE: ENOC C. AGUILERA et ux vs. ACORD CORPORATION et al

Arizona Supreme Court No. CV-02-0108-PR
Court of Appeals Division One No. 1 CA-CV 01-0602

Maricopa County Superior Court No. CV99-011-756

GREETINGS:

The following action was taken by the Supreme Court of the State of Arizona on May 30, 2002, in regard to the above-referenced cause:

ORDERED: Petition for Review = DENIED.

A panel composed of Vice Chief Justice McGregor, Justice Feldman and Justice Berch participated in the determination of this matter.

Record returned to the Court of Appeals, Division One, Phoenix, this 3rd day of June, 2002.

Noel K, Dessaint, Clerk

To:

Enoc C. Aguilera and Emma F. Aguilera

Michael R. Perry, Esq and Daniel W. McCarthy, Esq, Carahan & Perry PLC

Glen D. Clark, Clerk, Court of Appeals, Division One

West Publishing Company

Lexis-Nexis

kab /n.s./

END OF ORDER

3. ABUSE OF PROCESS AND UNLAWFUL CLAIMS

A. Thus the respondents' should not be allowed by this Court to escape liability simply because they managed to persuade some local judges to go along with their scheme.

This constitutes evidence that the respondents recognized willfully and, knowingly the fact that their actions were and are unlawful: establishing factual merit that any Arizona law purported approval of what they were doing to two defenseless senior citizens and their Christian ministry of THE BOOK MINISTRY. Respondents' violation of the 'Due Process Clause' is null and void everywhere, including the state of Arizona where it was rendered.[1]

B. Abuse, intent, and willfulness were the essential elements of the offense in our appeal. Herewith, now designated to the Honorable United States Supreme Court.

C. Arizona has legitimate interests in protecting its citizens from deception with fraudulent schemes. Wherefore, punitive damages should be awarded under the due process clause, with consideration given only to the interests and well being of the senior pro se litigants: The Petitioners.

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[2] **Under this section proscribing fraudulent schemes and artifices, knowledge of the actual falcity of <u>any</u> particular representation made to promote the scheme is not required; provided the intent is to deceive, it is immaterial whether the individual knew the representation was false or simply did not care and was indifferent to the truth.** *State v. Hass* (1983) 138 Ariz. 413, 675 P.2d 673.

D. Respondents 'abuse of process' based on judgments maintaining principles of sovereignty over the pro se appellants, were courted in the court of appeals througjh baseless decisions not founded - as ruled by the **Honorable Hall** on the real issue of the appeal. The court's decision was based on the dismissed appellees' demand failing to acknowledge the presense of the respondents' as the only entities 'identified as appellees' in the caption of the appellants 'notice of appeal.' Apart from these differences, which are of assistance to the appellants', it is interesting to note that the superior court lost the appellants' filed "Response" of which the appellants have dated copies. Violated acts of the 'traditional notions of fair play and substancial justice.'[1]

E. The Honorable Court should also be made aware that during the span of this litigation, the appellees' failed to serve the appellants with certain filed papers, as did the courts' clerks of their notices: On July 1st, 2002, my wife Emma and I went to the Supreme Court to check on the status of our petition. After searching the attending clerks the court's computer, we were informed that our petition

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[1] **Nothing in the first Amendment bars an award of punitive damages in a defamation action if considered upon a showing of knowing or reckless falsehood.** *Selby v. Savard* (1982) 134 Ariz. 222, 655 P.2d 342.

for review had been denied thirty days prior, on May 30, 2002: Date of the petitioner's birthday: GREETINGS!

F. Respondents' misrepresentation violated gross infractions of law: violation of rules that govern the legal procedure of appeals before the Arizona appellate court. Said infractions were:

(1) Mistake, inadvertence, neglect, fraud, contempt (heretofore denominated intrinsic), misrepresentation and misconduct of the defendant attorneys.

(2) By their fraud and contempt before the court, they have made the lower court's judgment void, for it is no longer equitable that the judgment should have prospective application.

(3) Furthermore, Judge Donahoe's order in the lower court was without leave of the appallate court, for it is the appellate court clerk's responsibility to serve the lower courts and justices all pending appeals and responses filed with the appellate court. This bears crucial evidence that the respondents used the lower court to illegally participate in their fraudulent scheme thus violating the appellate court's jurisdiction.

(4) Other claims justifying release from the operation of the lower court's judgment, were made in numerous occasions by the appellants before the lower court and the Arizona appellate court.

4. OTHER STATUTORY VIOLATIONS

A. These unjust procedures administered in the appellate court are confirmed in Judge Ann A. Scott Timmer's order of February 14, 2002, illustrated as follows:

Filed 02/14/2002

IN THE
COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

ENOC C. AGUILERA et al.,	) 1 CA-CV 01-0602
Plaintiffs and	) DEPARTMENT M
Appellants,	) (Maricopa County
v.	) Superior Court
DANIELS/NICHOLSON et al.,	) No. CV99-011756)
Defendants and	)
Respondents.	) ORDER TIMMER P.J.
	)

Judges Ann A. Scott Timmer, Sheldon H. Weisberg, and Susan A. Ehrlich have considered "Appellants Reply Brief" filed February 1, 2002. This brief is not a genuine reply brief, but rather an unauthorized supplement to appellants' opening brief filed December 21, 2001.

Currently pending before this court is appellees' motion to dismiss this appeal. Appellants have until February

25, 2002, to file a response to this motion, and appellees will be entitled to file a reply in support of their own motion thereafter. Depending on the court's ruling on the motion to dismiss the appeal, a new due date for appellees' answering brief will be set, if appropriate. Appellants will be entitled to file a brief in reply to any such answering brief within twenty days after the answering brief is served on them. On the court's own motion,

IT IS ORDERED striking "Appellants' Reply Brief" filed February 1, 2002. The clerk of this court shall retain the original thereof in an envelope in the court's file and retain the copies thereof for appellants' retrieval within thirty days, after which the copies will be destroyed.

Dated this 14th day of February, 2002,

/s/ ANN. A. SCOTT TIMMER
PRESIDING JUDGE

B. As acknowledged in her filed ORDER of March 7, 2002, as promised, **Judge Ann A. Scott Timmer**, in her court, dismissed case No. 1CA-CV 01-0602. **[App. at 3.]** Appellants' seek tort damages for the aforementioned alleged violation of the Arizona rules of civil procedure:

under the principle that violation of a statute embodying a public policy is generally actionable even though no specific remedy is provided in the statute.[1]

C. CANON 4: A Judge Shall So Condust the judge's Extra-judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations: A judge shall conduct all of the judge's extra-judicial activities so that they do not:
(1) cast reasonable doubt on the judge's capacity to act impartially as a judge;[2]
(2) demean the judicial office; or
(3) interfere with the proper performance of judicial duties.[3]

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[1] Where actual malice has been shown, jury may award punitive damages for defamation. Id. *Selby v. Savardt* (1983) 134 Ariz. 222, 655 P.2d 342.

[2] And the right of action to recover damages for injuries shall bever be abrogated. A.R.S. Const. art. 18. §6.-Id.

[3] Even a constitutional right is subject to a reasonable statute of limitations, and reasonable restrictions do not "abrogate" the right to recover damages for injuries within meaning of constitutional section stating that the right of action to recover damages for injuries shall never be abrogated. Arizona Revised Statutes §12-542(B).

D. 'The effect of such statutes, in essence, is to create a duty or standard of conduct, the breach of which, where it causes injury, gives rise to liability in tort.'[1]

E. Attorneys for the respondents should have been held in contempt of court for having maliciously expanded the litigation of the dismissed appellees'. And, thus, fraudulently achieve the concealment of the respondents' malice and inequity before the appellate court. Therewith, Intentional infliction of emotional distress is herewith revealed.

F. Respondents' achievements in prior litigation continue to defraud the appellants - the Petitioners. And through repetitious schemes they knowingly continue to deceive the judicial processes that govern Arizona law through invalid course of action. The respondents have deprived the appellants from their legal right to subpoena numerous witnesses that could have been able to testify to the fact that all members of the association community received copies of the defamatory police report in the U.S. mail. This relevant evidence denotes the respondents' misconduct and violation of Public Law 104 Title V Sec. 502 1(a), (B) (i) and (ii): made and created knowingly and purposefully.

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[1] There is perhaps no doctrine more firmly established than "the principle that liability follows tortious wrongdoing;" that where negligence is the proximate cause of injury the rule is liability and immunity is the exception -

Pritchard v. State. Page-2-6 Judgment 181(3) Ariz. 1990.

G. Counsel for the dismissed appellees have repeatedly made know to the former courts that they were retained by the respondents' to represent the dismissed defendants in their 'contituing conspiracy.' Yet no court courted the appellants with the same defense the appellees were granted nor advised the defenseless appellants they were entitled to the same right. Therefore, the respondents are guilty of having denied this same privilege to acting members in good standing of the Association: the minority pro se appellants' - the Petitioners before the Honorable Court.

5. OTHER CLAIMS

A. The appellants have repeatedly claimed disclosure of the respondents as entities NONPARTY AT FAULT appellees' in the dismissed action. Partially and wholly at fault, and wholly liable for the Demand made in the Complaint. Through their act of self incrimination, the respondents have revealed before the Court their implication as partakers guilty of aiding and abeting the perpetrators' in acts of perjury and contempt. In consequence of which the acts of a "continuing conspiracy" exists to this day.

B. Wherefore, the lower court and the court of appeals have violated the 'due process rule' for blatantly refusing to acknowledge the nonparty at fault rules:

[1] *Nonparty at Fault Rules:*

Any party who alleges, pursuant to **A.R.S. §12-2506 (B) (as amended)**, that a person or entity not a party to the action was wholly or partially at fault in causing any personal-injury, property damage or wrongful death for which damages are sought shall provide the identity, location, and the facts supporting the claimed liability of such nonparty at the time of compliance with the requirements of Rule V(a) of the Uniform Rules of Practice of the Superior Court, if applicable, or within one hundred fifty (150) days after the filing of that party's answer, whichever is earlier. The trier of fact shall not be permitted to allocate or apportion any percentage of fault to any nonparty whose identity is not disclosed in accordance with the requirements of this subpart 5 except upon written agreement of the parties or upon motion establishing newly discovered evidence of such nonparty's liability which could not have been discovered within time periods for compliance with the requirements of this subpart 5. (Arizona Rules of Civil Procedure Rule 26(b)(5).)

C. Respondents' through their counsel have contested allegation against our tort nonparty liability claim in the lower courts. Nevertheless, the appellants' personal injury of persons', severe mental anguish, injurious reputation, with civil violated rights caused by the intentional wrongful acts of the respondents, has been too extreme, painful, and devastating for this Court to ignore and disregard.

D. The lower court's denial of appellants' right to direct relief of entitlement proceedings, was due to the respondents concealment of material fact with false representation grounded on deceit. Disincentive means to deter enforced coverage of policy issued by carriers that entitles the appellants to full indemnity obligation and personal injury liability of two million dollars each occurence. Indemnitees' liability to injured persons' of the appellants' as co-owners and members in good standing of the Villa Charme IV Association. In conjunction, entitlement to personal injury liability, advertising injury, and irreparable defamation of title of the appellants' Christian ministry of THE BOOK MINISTRY is also in demand.

E. The respondents' before the Honorable Court, as legal Carriers and legal Agents for The Association and the petitioners, conspired in the retainment of counsel for the defense of the dismissed defendant/appellees' - gratuitous retainment of counsel to assist in the gross incrimination of the defenseless disabled plaintiffs/appellants. As **Judge Donahoe's** order bears witness and attests, the defending counsels' motion for the dismissal of <u>all</u> the insurance carriers was granted by **Judge Donahoe**. An infraction of justice rightfully ruled against by the **Honorable Phillip Hall's court**, which condemned the fraudulent scheme and attempt to have the case against the respondents' totally removed and dismissed from the Arizona appallate court's jurisdiction. [**App. 7: State of Ariz. D.C. v. O'Conner.**]

6. CONCLUDING

A. The creators, makers, and solicitors of the communication made in the police report - the respondents', have known from the start of this action that many of the recipients of the distributed police report's filthy communication were children in the community under 18 years of age. Consequently, and through their infraction of law condoned in **Judge Donahoe's** court, the respondents and counsel knowingly and willfully have violated The Communications Decency Act of 1996. They, as insurance companies are liable and at fault before this Honorable Court's presense. This claim is confirmed in the following:

COURT OF APPEALS
IN AND FOR THE STATE OF ARIZONA
DIVISION ONE

Enoc C. and Emma F. Aguilera, Plaintiffs/Appellants, vs. DANIELS/NICHOLSON INS. AGENCY; AUTO/OWNERS INS. CO.; FARMERS INS. GROUP; UTICA NATIONAL INS. GROUP, Defendants/Appellees.	) 1 CA-CV 01-0602)) MARICOPA COUNTY) Superior Court) No. CV 99-11756)) **MOTION TO DISMISS**) **APPEAL**))

The Association and Auto/Owners Insurance Company submit this request because the appeal seeks relief from insurance carriers, such as Auto/Owners, that were not parties to the prior court proceedimgs. **[App. at 6, 7, 8. Counsel protected the Respondents' own interests.]**

Removing the prevailing parties and non-parties from this appeal leaves the Aguileras with nobody against whom to litigate. Accordingly, the Aguileras' appeal should be dismissed; otherwise, the Aguileras will simply file something else to which the Association, Auto/Owners or some other defendant must respond.

Accordingly, the Association and Auto/Owners request that the court dismiss this appeal and further sanction the Aguileras. With respect to the amount and severity of the sanction, the Association and Auto/Owners suggest that the court award all defendants the costs and attorneys' fees incurred in connection with this appeal.

SUBMITTED this 4th day of February, 2002.
/s/Counsel for the Respondents

B. As per counsel's claim that the dismissed respondents' have been vindicated (page 4 of his motion), counsel's own statement condemns the lower courts' **illegal, licentious, inimical, biased, and discriminatory proceedings:**

INSURANCE POLICIES[1] and the PRECLUSIVE DEVICES of ESTOPPEL.[2]

[1] Estoppel arises when the insurer has brought about or permitted such conditions as make it inequitable for the insured to claim a right to which the insured would otherwise be entitled; if the insurer makes, by word of act, a false representation of fact with reference to the contract upon which the insured, acting in good faith, reasonably relies to his prejudice, he will not be allowed to make any claim under the terms of the insurance policy which is inconsistent with such representation

[2] The duty to provide a defense is enforced by rules creating strong disincentives against default in performance of the duty. One such rule is that if the indemnitor fails to assume the defense of the action involving a claim that "might be found to be" within the indemnity obligation, he is precluded from contesting not only the existence and extent of the indemnitee's liability to the injured person but also the obligation to indemnify. *Collateral Estoppel 397.* [The respondents' persistence in defending wrong.]

C. Thus, unfairness has been evident in the course of this action and appeal. Whereat, the appellants' opportunity to litigate being not complete and unfettered, the appellate court's decision was in error upon granting preclusion, thus causing fundamental unfairness to be existent.

D. From the initiation of this cause the appellants have contested the civil and racial discrimination imposed upon them by the courts. Licentious discrimination has been inflicted upon the pro se petitioners whose only committed crime has been an attempt to vindicate their Christian ministry of THE BOOK MINISTRY. We thank our Lord for not forsaking us thus far.

E. The fact the courts purposely have refused to acknowledge, is the factual relevant evidence that the Petitioners are members in good standing of the association community where we reside. It would be imposible not to be aware of the activities of the co-owners and the Board of Directors' due to our good character status in our comminity. We have good friends and neighbors here. Co-owners, former and present board members that can testify against the discriminatory practices of the former Board of Directors' that made and instigated this horrendous ordeal against the pro se disabled senior Petitioners: Inasmuch as the former courts have refused to justify through just vindication and compensation the infrature of inflicted personal injury laws racially motivated by lies and heresay.

F. Blatant 'intentional infliction of emotional distress.' Civil and constitutional rights licentiously violated through the outrageous conduct of the respondents which is so extreme as to exceed, in truth, all bounds of that tolerated in a civilized community: even in our community of Villa

Charme IV Homeowners' Association. To a stated degree and extent, as evidenced in the 'judgments without rest' in **Judge Danahoe's** court, and **Judge Timmer's** court, to be ignorant and blind of this ascetic exaction of fact - hereto judicially presented - is in truth a gross miscarriage of justice. **[App. at 1 and App. at 4.]**

TO CONCLUDE

A. We, the Petitioners, have exhausted our financial sources and physical abilities in pursuing Justice for the inflicted violations of our civil rights.[1] Our doctors and family members are very concerned with our level of stress, depression, and anxiety suffered in the past five years of litigation. In view of this conclusion, appellants' can press claim for abuse of process associated with the violation of these statutes:[2]

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[1] **Award of punitive damages pursuant to § 1983 plaintiff must be predicated on facts establishing evil, motive, intent, recklessness or callous indifference:**

[2] **Court examination of allegedly defamatory statement to insure that First Amendment concerns are protected must insure that matter is left to jury only where there are two tenable views or interpretations of statement.** U.S.-C.A. Const. Amend. 1, 7.

Trial Court:	Superior Court Maricopa County
Trial Judge	The Honorable Gary E. Donahoe
Counsel for Appellants	Pro Se Litigant ENOC C. AGUILERA
Counsel for Respondents	Pro Per Status Litigants

Court of Appeals State of Arizona Division One,
No. 1 CA-CV 01-0602
IN THE SUPREME COURT STATE OF ARIZONA
No. CV-02-0108-PR

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ENOC C. AGUILERA Et Al.,
Appellants
v.
DANIELS/NICHOLSON
Et Al., Respondents

(Filed
May 30th, 2002)

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Petition for review DENIED

/n.s./ McGREGOR
Vice Chief Justice

==========

Respectfully Submitted this 23 day of September, 2002.

Enoc C. Aguilera

Enoc C. Aguilera pro se
Litigant.

{THE BOOK MINISTRY}